



Planning Commission Agenda

Special Meeting of November 23, 2015
Council Chambers, Civic Center
1243 National City Boulevard
National City, CA 91950

Welcome to the Planning Commission meeting. The National City Planning Commission conducts its meeting in the interest of community benefit. Your participation is helpful. These proceedings are video recorded.

Roll Call

Pledge of Allegiance by Commissioner Flores

Approval of Agenda

1. Approval of Agenda for the Special Meeting on November 23, 2015.

ORAL COMMUNICATIONS (3 MINUTE TIME LIMIT).

NOTE: Under State law, items requiring Commission action must be brought back on a subsequent agenda unless they are of a demonstrated emergency or urgent nature.



The Planning Commission requests that all cellphones, pagers, and/or smart devices be turned off during the meeting.

Upon request, this agenda can be made available in appropriate alternative formats to persons with a disability in compliance with the Americans with Disabilities Act. Please contact the Planning Department at (619) 336-4310 to request a disability-related modification or accommodation. Notification 24 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

PUBLIC HEARINGS

2. Amendment to Title 18 (Zoning) Chapter 18.30.340 of the National City Municipal Code (Medical marijuana dispensaries) to address cultivation of marijuana (Case File No: 2015-25 A)
3. Resolution 2015-25 taking action on an Amendment to Title 18 (Zoning) Chapter 18.30.340 of the National City Municipal Code (Medical marijuana dispensaries) to address cultivation of marijuana (Case File No: 2015-25 A)

STAFF REPORTS

City Attorney

Executive Director

Principal Planners

Commissioners

Chairperson

ADJOURNMENT

Adjournment to next regularly scheduled meeting on December 7, 2015



Item no. **2**
November 23, 2015

CITY OF NATIONAL CITY - PLANNING DEPARTMENT
1243 NATIONAL CITY BLVD., NATIONAL CITY, CA 91950

PLANNING COMMISSION STAFF REPORT

Title: PUBLIC HEARING – AN AMENDMENT TO TITLE 18 (ZONING) CHAPTER 18.30.340 OF THE NATIONAL CITY MUNICIPAL CODE (MEDICAL MARIJUANA DISPENSARIES) TO ADDRESS CULTIVATION OF MARIJUANA.

Case File No.: 2015-25 A

Location: Citywide

Staff report by: Martin Reeder, AICP – Principal Planner

Applicant: City-initiated

Environmental review: Not a project under CEQA (no physical change)

Staff recommendation: Recommend approval of an Amendment prohibiting marijuana cultivation

Background

The City is seeking an amendment to the Municipal Code in order to address the cultivation of marijuana. The amendment is needed in order to respond to recent changes in state law scheduled to take effect in 2016.

Previous Action

The Planning Commission initiated a Municipal Code Amendment to address marijuana cultivation at their regular meeting of November 2, 2015. The Commission asked staff

to return with options for both the regulation and prohibition of medical marijuana cultivation. Although staff had originally suggested an amendment covering deliveries of marijuana and mobile marijuana dispensaries in addition to cultivation, the Commission chose to initiate an amendment that only addresses marijuana cultivation at this time (see discussion related to AB 243 below).

History

On October 9, 2015, Governor Brown approved *The Medical Marijuana Regulation and Safety Act* (The Act), which establishes comprehensive, statewide licensure and regulations for commercial medical marijuana activity that respect local control, protect patients, promote public safety, and preserve the environment. The Act is comprised of three separate bills: Senate Bill 643 (McGuire), Assembly Bill 266 (Bonta, Cooley, Lackey and Jones-Sawyer), and Assembly Bill 243 (Wood). Only AB 243 and AB 266 affect local regulations. In general, AB 243 relates to medical marijuana cultivation; and, AB 266 relates to deliveries and mobile dispensaries. AB 243 has the pressing deadline of March 1, 2016, which is driving the current timeline.

Proposal

The general purpose of the amendment is to amend the chapter to address the cultivation of medical marijuana and marijuana generally (Cultivation); including, but not limited to, regulating and/or prohibiting such land use activities. The recommendation of staff to amend the code to prohibit cultivation is predicated upon existing code language that prohibits medical marijuana dispensaries and that cultivation is not a permitted use. The City's Land Use Code is based upon permissive zoning, which means only enumerated uses are allowed uses. The proposed prohibition is consistent with the City Council's prior adoption of section 18.30.340 (Medical Marijuana Dispensaries – prohibited).

Analysis

Assembly Bill 243 (AB 243) will require immediate attention from local governments if they wish to prohibit or continue to prohibit certain activities related to medical marijuana, including the cultivation of medical marijuana. The Land Use Code currently prohibits Medical Marijuana Dispensaries under section 18.30.340. Cultivation is not expressly prohibited. AB 243 requires the City to have a prohibition ordinance in place by *March 1, 2016*. If not enacted by this date, the City will lose its local land use authority to regulate or ban cultivation. The full text of AB 243 is attached for your review.

The Land Use Code is a "permissive zoning" code. This means that uses not expressly permitted are prohibited. Accordingly, cultivation is not currently allowed in National City

as it is not specifically permitted by the Land Use Code. However, in order to ensure clarity in the light of recent enactment of *The Act*, and affirmatively retain local land use control on this issue, the Code should be updated to be specific as to the prohibition or regulation of cultivation.

Other jurisdictions

Of the eighteen cities in the County of San Diego, only the City of San Diego permits marijuana cultivation. The City of San Marcos recently approved the introduction of an ordinance that would prohibit the cultivation, delivery and sale of medical marijuana. The City of Vista is amending their Development Code to continue for its operation as a permissive zoning code, which would continue to prohibit the cultivation of marijuana (and other uses) being that the use is not expressly permitted.

The City of San Diego permits the cultivation of medicinal marijuana either by a licensed Medical Marijuana Consumer Cooperative, by Qualified Patients, or by Primary Caregivers, the latter two of which are defined as follows [in the San Diego Municipal Code]:

Primary caregiver means the individual designated by the *qualified patient* who has consistently assumed responsibility for the housing, health, or safety of the *qualified patient*, in accordance with state law, including California Health and Safety Code section 11362.5. As explained in *People v. Mentch*, 45 Cal. 4th 274 (2008), a *primary caregiver* is a person who consistently provides caregiving to a *qualified patient*, independent of any assistance in taking medical *marijuana*, at or before the time he or she assumed responsibility for assisting with medical *marijuana*.

Qualified patient means a California resident having the right to obtain and use *marijuana* for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of *marijuana* in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which *marijuana* provides relief in accordance with state law, including California Health and Safety Code section 11362.5.

Option for prohibition

Staff is recommending prohibition of marijuana cultivation for the following reasons:

- There is insufficient time to research, analyze, and prepare an Ordinance establishing a regulatory scheme based on the City of San Diego's Ordinance before the March 1, 2016 deadline.
- City Council adopted the Land Use Code with a specific ban of medical marijuana dispensaries and the proposed prohibition of cultivation is consistent with the Land Use Code.
- Adopting a prohibition of cultivation does not prevent the City from subsequently adopting cultivation regulations, but failing to adopt a prohibition will prevent the City from retaining local land use control, thereby relinquishing local land use to the State in this area.
- Regulation of marijuana cultivation is not consistent with the General Plan (see below)
- The Police Department is firmly opposed to medical marijuana and associated activities in the City for the following reasons:
- Research conducted by the National City Police Department through the DEA concludes that marijuana is a dangerous addictive drug that poses significant health threats to users; marijuana has no medical value that can't be met more effectively by legal drugs; marijuana users are far more likely to use other drugs like cocaine and heroin than non-marijuana users; and proponents of legalizing marijuana use of "medical marijuana" as a red herring in an effort to advocate broader legalization of drug use.

Additional information provided by the Police Department has been attached, including descriptions of Scheduled Controlled Substances per the Controlled Substances Act (CSA), and documented public safety issues from other jurisdictions that allow marijuana cultivation. Some of the documented impacts associated with cultivation include:

- Gun violence associated with robberies or attempted robberies of marijuana plants.
- Increase in traffic accidents and fatalities involving persons under the influence of marijuana.
- Environmental impacts caused by pollutant discharge from growing operations.

The amendment prohibiting cultivation is intended to apply to all marijuana products, medical or otherwise, in order to capture possible regulation changes in the future. It is important to note that a prohibition of cultivation today does not mean that cultivation can never be permitted in the future. A subsequent amendment of the Land Use Code may

occur at a later time to address cultivation. This would also allow staff to adequately research, analyze, and prepare an Ordinance for review by the Planning Commission and City Council.

Option for regulation

If the Commission chooses to amend the Code to regulate the cultivation of marijuana, staff recommends using the City of San Diego municipal code as a framework. Staff has not had sufficient time, however, to adequately analyze that ordinance. The code sections (Article 2: Health Regulated Businesses and Activities, Division 13: Medical Marijuana Regulations: Patients and Caregivers & Division 15: Medical Marijuana Consumer Cooperatives) are attached for your review and would be used to create language regulating cultivation. That language would be forwarded to the City Council for inclusion into an ordinance, should they choose to take the path of regulation rather than prohibition. While staff is recommending prohibition at this time, regulation would still be possible in the future.

General Plan consistency

The purpose of the Health and Environmental Justice Element of the General Plan is to identify public health risks and environmental justice concerns and improve living conditions to foster the physical health and well-being of National City's residents. Based on the information from the Police Department that marijuana poses significant health threats to users and cultivation is accompanied by increased criminal activity, regulating cultivation would not be consistent with the General Plan.

California Environmental Quality Act

The proposed Amendment has been reviewed in compliance with the California Environmental Quality Act. Staff has determined that the proposed use is exempt from CEQA under section 15061(b)(3) – general rule. The general rule states that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Cultivation is currently not a permitted use and this Code Amendment affirms that marijuana cultivation is prohibited. It can be seen with certainty that there is no possibility that the activity in question may have a significant impact on the environment; the activity is not subject to CEQA.

Summary

Due to the short notice provided by the State, there is not enough time to fully capture and analyze the issues resulting from regulating cultivation in the City. The Commission showed interest in the City benefiting from additional revenue streams associated with permitting cultivation. Monetary policy and taxation are matters of City Council policy. It is important to point out that a prohibition of cultivation does not mean that it cannot be

permitted in the future, pending a subsequent amendment of the Land Use Code. Due to the short timeframe needed to fully vet the information for a regulatory scheme and still have an Ordinance in place before March 1, 2016, staff is recommending that the Commission amend the Municipal Code to prohibit marijuana cultivation.

OPTIONS

1. Recommend approval of the Amendment to Section 18.30.340 of the Land Use Code, prohibiting marijuana cultivation, based on the attached findings; or
2. Recommend approval of the Amendment to Section 18.30.340 of the Land Use Code, regulating marijuana cultivation, based on the attached findings/findings to be made by the Planning Commission; or
3. Recommend denial of the Amendment to Section 18.30.340 of the Land Use Code, based on findings to be determined by the Planning Commission.

ATTACHMENTS

1. Recommended Findings for Approval of an amendment prohibiting marijuana cultivation.
2. Assembly Bill 243
3. Existing Land Use Code Chapter 18.30.340 – Medical Marijuana Dispensaries.
4. Proposed Land Use Code Chapter 18.30.340 – Medical Marijuana Dispensaries (prohibition of cultivation)
5. City of San Diego Municipal Code – Article 2: Health Regulated Businesses and Activities, Division 13: Medical Marijuana Regulations: Patients and Caregivers
6. City of San Diego Municipal Code – Article 2: Health Regulated Businesses and Activities, Division 15: Medical Marijuana Consumer Cooperatives
7. Controlled Substances Act definitions and documented public safety issues related to marijuana cultivation (Police)
8. Public Notice (published in the San Diego Union-Tribune, not mailed)



MARTIN REEDER, AICP
Principal Planner



BRAD RAULSTON
Executive Director

RECOMMENDED FINDINGS FOR APPROVAL OF
AN AMENDMENT TO TITLE 18 (ZONING)
CHAPTER 18.30.340 OF THE NATIONAL CITY MUNICIPAL CODE
(MEDICAL MARIJUANA DISPENSARIES)
TO PROHIBIT CULTIVATION OF MEDICAL MARIJUANA
AND MARIJUANA GENERALLY.
CASE FILE 2015-25 A

1. That the proposed amendment is in the public interest because it retains local land use authority by the City; and local land use should remain with the City, because the City should retain its legislative function to determine what uses are most appropriate within its jurisdiction.
2. The compressed time frame from the State of California to enact an ordinance so that the City can continue local land use control over cultivation does not provide sufficient time to fully research and analyze the issues regarding allowing cultivation in the City; and prohibition of cultivation preserves local land use control while allowing for a subsequent amendment establishing regulation over cultivation at a later date, if so desired.
3. That the proposed amendment is in the public interest because marijuana cultivation in other California jurisdictions has resulted in impacts such as increased gun violence, robberies, traffic accidents/fatalities, and environmental impacts caused by pollutant discharge from growing operations, which would pose significant health threats to National City residents.
4. That the proposed amendment is in the public interest and is consistent with General Plan policy, because the purpose of the Health and Environmental Justice Element of the General Plan is to identify public health risks and environmental justice concerns and improve living conditions to foster the physical health and well-being of National City's residents, and because the Police Department has concluded that marijuana poses significant health threats to users.
5. That the proposed amendment has been reviewed to be in compliance with the California Environmental Quality Act (CEQA), because it has been determined that the proposed use is exempt from CEQA under section 15061(b)(3) – general rule. The project is not considered a project under CEQA; there is no possibility that the activity in question may have a significant impact on the environment. Cultivation is currently not a permitted use and this Code Amendment affirms that marijuana cultivation is prohibited.

RECOMMENDED FINDINGS FOR APPROVAL OF
AN AMENDMENT TO TITLE 18 (ZONING)
CHAPTER 18.30.340 OF THE NATIONAL CITY MUNICIPAL CODE
(MEDICAL MARIJUANA DISPENSARIES)
TO REGULATE CULTIVATION OF MEDICAL MARIJUANA
AND MARIJUANA GENERALLY.
CASE FILE 2015-25 A

1. That the proposed amendment is in the public interest because proposed regulations related to medical marijuana cultivation will be consistent with California Health and Safety Code section 11362.5 (Compassionate Use Act) and California Health and Safety Code sections 11362.7-11362.83 (Medical Marijuana Program), which are designed to protect the public health, safety, and welfare.
2. That the proposed amendment is in the public interest because nothing in the proposed regulation will be intended to override a peace officer's judgment and discretion based on a case-by-case evaluation of the totality of the circumstances, or to interfere with a peace officer's sworn duty to enforce applicable law.
3. That the proposed amendment is in the public interest because the proposed regulations will maintain the rights of a *qualified patient* or *primary caregiver* otherwise authorized by California Health and Safety Code section 11362.5(d).
4. That the proposed amendment is in the public interest because nothing in the proposed regulations will be intended to authorize the sale, distribution, possession of *marijuana*, or any other transaction, in violation of state law.

RESOLUTION NO. 2015-25 (a)

**A RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF NATIONAL CITY, CALIFORNIA,
RECOMMENDING APPROVAL OF A MUNICIPAL CODE AMENDMENT
TO TITLE 18 (ZONING) CHAPTER 18.30.340 OF THE
NATIONAL CITY MUNICIPAL CODE
(MEDICAL MARIJUANA DISPENSARIES)
TO PROHIBIT CULTIVATION OF MARIJUANA.
CASE FILE NO. 2015-25 A**

WHEREAS, pursuant to the terms and provisions of the Government Code of the State of California, proceedings were duly initiated for the amendment of the National City Municipal Code, Chapter 18.30.340; and,

WHEREAS, the Planning Commission of the City of National City, California, considered said proposed amendment at a duly advertised public hearing held on November 23, 2015, at which time the Planning Commission considered evidence; and,

WHEREAS, at said public hearing the Planning Commission considered the staff report provided for Case File No. 2015-25 A, which is maintained by the City and incorporated herein by reference; along with any other evidence presented at said hearing; and,

WHEREAS, this action is taken pursuant to all applicable procedures required by State law and City law; and,

WHEREAS, this action is taken in an effort to be compliant with applicable State and Federal law; and,

WHEREAS, the action hereby taken is found to be essential for the preservation of the public health, safety and general welfare.

NOW, THEREFORE, BE IT RESOLVED by the City Planning Commission of the City of National City, California, that the evidence presented to the Planning Commission at the public hearing held on November 23, 2015, support the following findings:

1. That the proposed amendment is in the public interest because it retains local land use authority by the City; and local land use should remain with the City, because the City should retain its legislative function to determine what uses are most appropriate within its jurisdiction.

2. The compressed time frame from the State of California to enact an ordinance so that the City can continue local land use control over cultivation does not provide sufficient time to fully research and analyze the issues regarding allowing cultivation in the City; and prohibition of cultivation preserves local land use control while allowing for a subsequent amendment establishing regulation over cultivation at a later date, if so desired.
3. That the proposed amendment is in the public interest because marijuana cultivation in other California jurisdictions has resulted in impacts such as increased gun violence, robberies, traffic accidents/fatalities, and environmental impacts caused by pollutant discharge from growing operations, which would pose significant health threats to National City residents.
4. That the proposed amendment is in the public interest and is consistent with General Plan policy, because the purpose of the Health and Environmental Justice Element of the General Plan is to identify public health risks and environmental justice concerns and improve living conditions to foster the physical health and well-being of National City's residents, and because the Police Department has concluded that marijuana poses significant health threats to users.
5. That the proposed amendment has been reviewed to be in compliance with the California Environmental Quality Act (CEQA), because it has been determined that the proposed use is exempt from CEQA under section 15061(b)(3) – general rule. The project is not considered a project under CEQA; there is no possibility that the activity in question may have a significant impact on the environment. Cultivation is currently not a permitted use and this Code Amendment affirms that marijuana cultivation is prohibited.

BE IT FURTHER RESOLVED that the Planning Commission recommends approval to the City Council of an amendment to Title 18 (Zoning) Chapter 18.30.340 of the National City Municipal Code (Medical marijuana dispensaries) to prohibit cultivation of marijuana.

BE IT FURTHER RESOLVED that copies of this Resolution be transmitted forthwith to the applicant and to the City Council.

CERTIFICATION:

This certifies that the Resolution was adopted by the Planning Commission at their meeting of November 23, 2015, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

CHAIRPERSON

RESOLUTION NO. 2015-25 (b)

**A RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF NATIONAL CITY, CALIFORNIA,
RECOMMENDING APPROVAL OF A MUNICIPAL CODE AMENDMENT
TO TITLE 18 (ZONING) CHAPTER 18.30.340 OF THE
NATIONAL CITY MUNICIPAL CODE
(MEDICAL MARIJUANA DISPENSARIES)
TO REGULATE CULTIVATION OF MARIJUANA.
CASE FILE NO. 2015-25 A**

WHEREAS, pursuant to the terms and provisions of the Government Code of the State of California, proceedings were duly initiated for the amendment of the National City Municipal Code, Chapter 18. 30.340; and,

WHEREAS, the Planning Commission of the City of National City, California, considered said proposed amendment at a duly advertised public hearing held on November 23, 2015, at which time the Planning Commission considered evidence; and,

WHEREAS, at said public hearing the Planning Commission considered the staff report provided for Case File No. 2015-25 A, which is maintained by the City and incorporated herein by reference; along with any other evidence presented at said hearing; and,

WHEREAS, this action is taken pursuant to all applicable procedures required by State law and City law; and,

WHEREAS, this action is taken in an effort to be compliant with applicable State and Federal law; and,

WHEREAS, the action hereby taken is found to be essential for the preservation of the public health, safety and general welfare.

NOW, THEREFORE, BE IT RESOLVED by the City Planning Commission of the City of National City, California, that the evidence presented to the Planning Commission at the public hearing held on November 23, 2015, support the following findings:

1. That the proposed amendment is in the public interest because proposed regulations related to medical marijuana cultivation will be consistent with California Health and Safety Code section 11362.5 (Compassionate Use Act) and California Health and Safety Code sections 11362.7-11362.83 (Medical Marijuana Program), which are designed to protect the public health, safety, and welfare.
2. That the proposed amendment is in the public interest because nothing in the proposed regulation will be intended to override a peace officer's judgment and

discretion based on a case-by-case evaluation of the totality of the circumstances, or to interfere with a peace officer's sworn duty to enforce applicable law.

3. That the proposed amendment is in the public interest because the proposed regulations will maintain the rights of a *qualified patient* or *primary caregiver* otherwise authorized by California Health and Safety Code section 11362.5(d).
4. That the proposed amendment is in the public interest because nothing in the proposed regulations will be intended to authorize the sale, distribution, possession of *marijuana*, or any other transaction, in violation of state law.

BE IT FURTHER RESOLVED that the Planning Commission recommends approval to the City Council of an amendment to Title 18 (Zoning) Chapter 18.30.340 of the National City Municipal Code (Medical marijuana dispensaries) to regulate cultivation of marijuana.

BE IT FURTHER RESOLVED that copies of this Resolution be transmitted forthwith to the applicant and to the City Council.

CERTIFICATION:

This certifies that the Resolution was adopted by the Planning Commission at their meeting of November 23, 2015, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

CHAIRPERSON